



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 1.5.13	Subject: DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES	
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 4	
Section 5: Case Records Management	Effective Date: Nov. 8, 1999	
Signature: /s/ Mike Ferriter, Director	Revised: 01/25/12	

I. POLICY

The Department of Corrections, in accordance with state law, will collect biological samples in the form of buccal swabs from felony offenders committed to facilities or supervised in programs administered by the Department.

II. APPLICABILITY

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

III. DEFINITIONS

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility or program operation and management.

Biological Sample – The removal of cheek cells by using a buccal swab of a type authorized by the Department of Justice, Forensic Science Division, or a vial or other container of blood.

Buccal Swab – The removal of cheek cells by means of a sterile swab.

DNA – Deoxyribonucleic Acid.

DNA Record – DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

DNA Testing – DNA analysis of materials derived from the human body for the purposes of identification.

Facility/Program – Refers to any division, prison, secure care correctional facility, correctional or training program, or community-based program under Department jurisdiction or contract. This term includes the facility building or residence, including property and land owned or leased and operated by the Department.

Felony Offense – Any offense under the Montana Code Annotated for which the maximum potential sentence under statute is death, life, or imprisonment in a state prison for a term exceeding one year.

Policy No. DOC 1.5.13	Chapter 1: Administration and Management	Page 2 of 4
Subject: DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES		

Offender – Any individual in the custody or under the supervision of the Department of Corrections or its contracted service providers. The term includes former offenders for whom less than one year has elapsed since discharge from Department custody or supervision.

Sexual Offense – The offenses contained in the definition of that term in [46-23-502, MCA](#).

Violent Offense – The offenses contained in the definition of that term in [46-23-502, MCA](#).

IV. DEPARTMENT DIRECTIVES

A. Applicability

1. Sexual or violent offenders (adult and youth) sentenced to the custody or under the supervision of the Department are required to submit biological samples if convicted of a sexual or violent offense as defined in Section IV of this policy, on or after October 1, 1995.
2. Adult offenders sentenced to the custody or under the supervision of the Department between October 1, 2001 and April 6, 2005 are required to submit biological samples if convicted of a felony offense under [44-6-103, MCA](#).
3. Adult offenders sentenced to the custody or under the supervision of the Department are required to submit biological samples if convicted of any felony offense, as defined in Section IV of this policy, on or after April 7, 2005.

B. Offenders Required to Provide Biological Samples

1. Adult offenders are required to provide biological samples for DNA testing if:
 - a. the court order convicts the offender of a felony offense;
 - b. the court order revokes a probationary sentence of an offender previously convicted of a felony offense; or
 - c. the court order requires the offender provide a biological sample under [46-18-202, MCA](#).
2. Youth offenders are required to provide biological samples for DNA testing if the court adjudicates the youth of a violent or sexual offense.

C. Offenders Incarcerated in Department Facilities

1. Upon admission of an offender to a Department facility, the reception unit or designated Department employee will obtain any required biological sample using the collection procedure outlined in this policy and a Buccal Swab Collection Kit provided by the Department of Justice.
2. Prior to discharging an offender subject to sampling, the Institutional Probation and Parole Officer (IPPO), or Department employee designated by the facility administrator, will determine whether a biological sample has been taken. If not, employee must ensure a sample in the form of a buccal swab is obtained before the offender discharges.
3. Procedures for Obtaining Biological Samples:

Policy No. DOC 1.5.13	Chapter 1: Administration and Management	Page 3 of 4
Subject: DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES		

- a. employee shall request that the offender provide the buccal swab sample. If the offender is cooperative, the Department employee will proceed with obtaining the buccal swab according to Section F below;
- b. if the offender refuses, the employee will order the offender to provide the sample. The offender may not disobey the order on the grounds that he or she may refuse medical treatment, as this is not a medical treatment procedure;
- c. if the offender refuses to obey this direct order, employee will prepare a severe disciplinary infraction report or major rule violation in accordance with [DOC Policy 3.4.1, Offender Disciplinary System](#) and local operational procedure and submit the report for processing;
- d. if the refusing adult offender is discharging to a probationary sentence, an IPPO must immediately begin procedures to have the suspended or deferred sentence revoked pursuant to [44-6-103\(4\), MCA](#); or
- e. if the refusing offender is discharging without further DOC supervision, an IPPO or case manager will immediately refer the case to Department legal staff who will pursue legal remedies.

D. Offenders on Probation, Parole or Intensive Supervision Program (ISP)

1. Offenders subject to sampling on probationary or parole status must provide a biological sample to the sheriff, or designee, in the sentencing jurisdiction; or the sheriff, or designee, in the jurisdiction in which the offender resides.
2. Upon signing the rules of probation, the supervising officer will notify the offender in writing of his or her duty to provide a biological sample. This written directive will advise the offender to provide a biological sample within ten (10) days to the sheriff's office in the sentencing jurisdiction or to the sheriff's office in the jurisdiction in which the offender resides.
3. If the offender fails to provide a biological sample or proof of compliance within ten (10) days, the supervising officer will immediately begin procedures to revoke the offender's probation or parole status pursuant to [44-6-103\(5\), MCA](#), or conduct an Adult Disciplinary Hearing with an offender on ISP.

E. Offenders in Prerelease Centers

1. Upon admission of an offender subject to sampling into a prerelease center, the prerelease admissions employee will determine whether a biological sample has been taken. If not, employee must obtain a sample in the form of a buccal swab using the following procedures:
 - a. employee will request that the offender provide the buccal swab sample. If the offender is cooperative, the employee will proceed with obtaining the buccal swab according to Section F below;
 - b. if the offender refuses, employee will order the offender to provide the sample. The offender may not disobey the order on the grounds that he or she may refuse medical treatment, as this is not a medical treatment procedure; and
 - c. if the offender refuses to provide a sample, the Department employee will prepare a disciplinary write-up and will conduct an Adult Disciplinary Hearing pursuant to

Policy No. DOC 1.5.13	Chapter 1: Administration and Management	Page 4 of 4
Subject: DNA TESTING/COLLECTION OF BIOLOGICAL SAMPLES		

[P&P 140-1.](#)

F. Collection Procedures

1. Department employee will:
 - a. collect a clear and clean thumbprint from the offender on the card provided in the Buccal Swab Collection Kit;
 - b. complete all information required on the information card and will enter the offender's DOC I.D. number and the offender's SID (State Identification) number. If an offender's SID number is unavailable, the offender's Social Security number may be used.
 - c. collect the buccal swab sample;
 - d. place the offender's thumbprint, the offender's information card and the offender's buccal swab sample in the envelope provided for shipping to the Montana DNA Laboratory;
 - e. mark the envelope for "certified mail" and mail it to the Montana DNA Laboratory, Forensic Science Division. Alternative delivery methods such a bulk package mailing and personal delivery may be used as long as the proper chain of evidence is observed; and
 - f. maintain records in the offender's record file that the biological sample was obtained, along with the date and name of the person taking the sample.

G. Confidential Criminal Justice Information

DNA records are to be considered confidential criminal justice information as per *44-6-108 MCA*.

V. CLOSING

Questions concerning this policy should be directed to the immediate supervisor.

VI. REFERENCES

- A. [Title 44, Chapter 5 Part 1](#); [44-6-101, MCA](#); [44-6-102, MCA](#); [44-6-103, MCA](#); [44-6-107, MCA](#); [44-6-108, MCA](#); [46-18-202, MCA](#); [46-23-215, MCA](#)
- B. *P&P 140-1, Probation and Parole Adult Offender Discipline*
- C. [DOC Policy 3.4.1, Offender Disciplinary System](#)

VII. ATTACHMENTS

None